



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2004

Mr. Billy B. Mullens  
Legal Services Division  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2004-4635

Dear Mr. Mullens:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202146.

The Texas General Land Office (the "GLO") received a request for "the production and pricing spreadsheets/data used for 1998 Shell settlement for the period 1986 forward." You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information appears to be the same information that was the subject of a previous ruling from this office. In Open Records Letter No. 2004-3096 (2004), we concluded that the GLO could withhold portions of the information submitted in that instance under section 552.101 of the Government Code and we ordered some information released. Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the GLO must rely on our decisions in Open Records Letter No. 2004-3096 with respect to the information requested in this instance that

was previously ruled upon in that decision.<sup>1</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

To the extent that the information requested in this instance was not the subject of the prior ruling, we will address your arguments for the responsive information you have submitted. You claim that portions of the submitted information, which you have highlighted, are excepted from disclosure pursuant to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." See Gov't Code § 552.101. This section encompasses the confidentiality provisions in other statutes. Section 52.140 of the Natural Resources Code provides in pertinent part:

(a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in section 52.135 of this code, is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

....

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information which is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under

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<sup>1</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

Section 52.135 of this code or the release of other information which would have been properly included in reports required under Section 52.131 of this code.

Nat. Res. Code § 52.140(a), (d).

You state that the highlighted information in the submitted documents is “information that was secured, derived, or obtained during the course of an inspection and examination pursuant to a royalty audit under § 52.135, Texas Natural Resources Code” and that it constitutes “preliminary information the GLO utilizes in order to properly assess a final royalty payment under § 52.135, Texas Natural Resources Code.” You assert that this information does not fall within the scope of any of the exceptions to confidentiality listed in section 52.140(d). Finally, you indicate that the highlighted information is “not contained in the form it appears in the submitted documents in information that is otherwise available to the public as described under 52.135(d)(3), Texas Natural Resources Code.” Based on your representations and our review of the submitted responsive information, we conclude that the GLO must withhold the highlighted information pursuant to section 552.101 of the Government Code in conjunction with section 52.140(a) of the Natural Resources Code. However, the GLO must release the remaining submitted responsive information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 202146

Enc. Submitted documents

c: Mr. David W. Scott  
Attorney at Law  
406 Keenland Drive  
Georgetown, Texas 78626  
(w/o enclosures)